Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 93-25
	)	
Direct Broadcast Satellite Public Service Obligations	)	

To: The Commission

COMMENTS OF
ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS
AND THE PUBLIC BROADCASTING SERVICE

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SUMMARY

Congress, the courts, and the Commission have consistently reaffirmed the government's paramount interest in advancing the nation's educational goals through the delivery of noncommercial educational programming through all available telecommunications technologies. Section 25(b) of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act") carries forward into the direct broadcast satellite medium the policies adopted in 1952 when the Commission initially set aside broadcast television channels for noncommercial educational use.

The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") urge the Commission to adopt, as expeditiously as possible, comprehensive rules that extend the power of DBS technology to noncommercial educational uses. The regulations the Commission adopts must ensure that public broadcasters and other qualified programmers are: (1) given maximum access to DBS satellite facilities on reasonable terms; and (2) assured that the capacity made available is in amounts and at times that will permit such entities to reach the maximum possible audience. These comments set forth proposals that APTS and PBS believe will achieve these objectives.

Enhancing educational opportunities is a top priority of national and state policymakers, parents and businesses. Public television's contribution to education in this country,

through partnerships with educators and through advances in technology and telecommunications, is unique and well-established. Public television has tremendous expertise in distance learning and extensive curriculum resources that could be made more accessible to millions of learners through DBS. Although public television today reaches approximately 2 million teachers and 30 million students in pre-K through 12 classrooms, DBS could expand public television's ability to meet the increasing demands for specialized courseware and teacher training to help meet national and state educational goals.

The Commission need not and should not attempt to define the term "noncommercial educational and informational programming." Instead, as Congress specified, access to the reserved capacity should be limited to the noncommercial entities specified in the statute. The Commission should incorporate in the DBS rules the existing definitions of these noncommercial entities contained in Section 397 of the Communications Act. Congress has already determined that the entities as defined in Section 397 are bona fide non-profit providers of educational programming that serves the public. While the Commission should not allow DBS providers to evade Congress's intent by creating sham entities through relationships with noncommercial entities, the Commission should encourage legitimate arrangements involving joint ventures between DBS providers and noncommercial programming suppliers that further the purposes of the statute.

The Commission should define "reasonable prices, terms, and conditions" in a way that facilitates noncommercial entities' use of the DBS capacity. As a preliminary matter, the rules should not inhibit free market negotiations between DBS providers and those noncommercial entities that are in a position to obtain compensation for distribution of their programming through DBS. Other noncommercial services, which are unable to obtain compensation for distribution of their programming, may rely on the statutory limitation of rates to 50 percent of direct costs. In light of the clear statutory language and legislative history, the Commission should define "direct costs" narrowly to minimize the cost to noncommercial program suppliers.

The rules should also ensure that qualified noncommercial programming services have access to a reasonable and consistent block of time so that their programs have the same opportunity to be seen as commercial programs. The reserved capacity should be made available on a continuous basis during hours when the audience will be available, unless the DBS provider and the noncommercial programmer agree on another arrangement. Qualified entities should also be afforded a consistent means of identification, so that viewers can identify and select the noncommercial programming with ease. In addition, the noncommercial programming should be offered to DBS subscribers as part of the lowest-price tier of programming or, in the case of special-event programming, at the lowest per-program-hour rate charged for any pay-per-view programming. The subscriber should

not be required to purchase equipment other than the lowest-price basic receiver equipment needed to obtain the noncommercial programming.

In the case of both Part 100 and Part 25 satellites, the licensee should be ultimately responsible for assuring that the Section 25(b) obligations are met. In order to facilitate use of the capacity and enforcement of the obligations, the Commission should require DBS licensees to file quarterly reports containing information relevant to implementation of the set-aside requirement.

APTS and PBS propose that the Commission impose a fixed 7 percent set-aside requirement for DBS providers. Such a requirement is not unduly burdensome in view of the growth in capacity of all DBS systems since 1993, the continuing advances in compression technology, and the fact that any new entrant will be obliged to offer the same high number of channels as the market leaders in order to compete effectively. The Commission should promulgate guidelines for calculating the amount of set-aside capacity available for noncommercial use in order to avoid disputes on this issue. The methodology must be sufficiently flexible to adapt to changes in technology, and it should be based on the total capacity of the satellite used for DBS.

APTS and PBS propose a formula that is based on the number of transponders used for DBS, with capacity expressed in terms of Megabits per second, "standard channels," and "equivalent hours per day," as defined in proposed regulatory

language. In the case of Part 25 satellites, the set-aside obligation should be triggered when a satellite has available 120 equivalent hours per day of video capacity used for DBS.

At least for the time being, the Commission should not attempt to prescribe how the set-aside capacity should be allocated among qualified entities. The DBS provider should be permitted to select from among qualified services to meet its obligation. If allocation disputes do develop, the Commission could reconsider this issue.

The Commission should also plan to revisit the allocation issue as DBS technology changes. In particular, if localized transmission on DBS becomes a reality, the Commission should require that a portion of the set-aside capacity be used to carry local services supplied by qualified noncommercial entities. In addition, the Commission should explore fully whether there are opportunities for localism in DBS and should consider imposing further requirements if localized transmission on DBS becomes a reality.

The Commission should not impose any political broadcasting requirements on noncommercial entities using the set-aside capacity. Section 25 by its terms indicates that such requirements do not apply to noncommercial entities. Moreover, imposing such requirements on these entities would undermine Congress's purpose in creating the set-aside capacity.

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The Association of America's Public Television Stations ("APTS") and The Public Broadcasting Service ("PBS") submit these comments in response to the Commission's Public Notice dated January 31, 1997 ("1997 Notice") and its Notice of Proposed Rule Making, 8 FCC Rcd 1589 (1993) ("1993 Notice") in the above-captioned proceeding. APTS and PBS are non-profit membership organizations whose members are licensees of virtually all of the nation's public television stations. APTS serves as the national representative of these stations, presenting their views and participating in proceedings before Congress, executive and administrative agencies, and in other activities. PBS provides, among other things, national program distribution and other program-related services to the nation's public television stations and the general public.

Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 ("the Act") requires the Commission

to adopt rules (a) defining the public interest obligations of providers of direct broadcast satellite ("DBS") service and (b) reserving DBS capacity for suppliers of noncommercial educational and informational programming upon reasonable prices, terms and conditions. Section 25 also requires the Commission to examine the potential for DBS to fulfill the goal of service to local communities. In 1993, the Commission issued a notice of proposed rulemaking to implement Section 25. APTS submitted both initial comments and reply comments in response to the 1993 notice.[1]

In September 1993, a federal district court declared Section 25 unconstitutional.[2] The court of appeals reversed, holding that Section 25 represents "'a reasonable means of promoting the public interest in diversified mass communications'" and therefore does not violate the First Amendment. Time Warner Entertainment Co. v. FCC, 93 F.3d 957, 977 (D.C. Cir. 1996), suoting FCC v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 802 (1978). The Commission now seeks new and revised comments in order to update the rulemaking record.

Like the 1993 comments filed by APTS, these comments focus primarily on Section 25(b), which requires the reservation

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[1] APTS's initial 1993 comments were filed jointly with the Corporation for Public Broadcasting ("CPB"). APTS and CPB filed separate reply comments in 1993, in order to focus on different issues raised in the record. PBS did not submit comments in 1993, but has a substantial interest in DBS regulation due to its status as a distributor of programming for DBS services. See page 20, infra.

[2] See Daniels Cablevision, Inc. v. United States, 835 F. Supp. 1, 8-9 (D.D.C. 1993).

of DBS **capacity** for certain suppliers of noncommercial educational and informational programming. The comments will also touch briefly on several issues raised by Section 25(a), including application of the political broadcast rules to noncommercial educational users of DBS capacity and the investigation of opportunities for localism on DBS.

I. Introduction

Significant changes have occurred since the Commission first considered a DBS rulemaking in 1993. When the Commission issued its initial request for comments, the DBS industry was in its infancy. While a number of permits had been issued pursuant to Part 100 of the Commission's rules, no high-power DBS system had begun operations, and the commercial feasibility of the DBS medium was still in doubt. The future of DBS technology **was** uncertain; among other things, available compression ratios limited the number of channels that could be offered to DBS subscribers.

Today, the status of the industry is far different. Satellites have been successfully launched, and DBS technology has advanced significantly. Several DBS services have begun operations and have succeeded in gaining millions of subscribers.[3] Moreover, higher compression ratios are now available, enabling each DBS operator to offer subscribers more

[3] Robichaux & Gruley, "Critics Target Murdoch's 'Death Star,'" Wall Street Journal (Mar. 17, 1997), at p. B1 (reporting 4.7 million DBS subscribers).

than 150 channels.[4] The commercial success of DBS has been widely discussed.[5] The perception that DBS has a lucrative future is reflected in the high prices recently paid for DBS business opportunities.[6]

In view of the quick start-up and commercial development of the industry, there is no need for the Commission to stay its hand in regulating DBS. In 1993, there was some doubt as to whether regulation would stifle the development of a fledgling industry, and some argued that the Commission should refrain from imposing regulation until the industry was well established. At this point, there can be no basis for such arguments. The Com-

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[4] See, e.g., Colman & Schlosser, "Primestar Arms for Battle," Broadcasting & Cable (Mar. 3, 1997), at p. 44 (beginning April 20, Primestar is expanding to 160 channels) ; Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming: Third Annual Report (FCC Dec. 26, 1996) ("Third Annual Report") at ¶ 41 (DIRECTV and United States Satellite Broadcasting Company offer 200 channels of complementary programming); id. at ¶ 176 (reporting recent testing of compression ratios as high as 24:1); Dickson, "GI Unveils 16:1 Compression," Broadcasting & Cable (Feb. 17, 1997), p. 50; Broadcasting & Cable (Mar. 3, 1997), at p. 41 (new Sky DBS service will have potential to broadcast at least 500 channels).

[5] See, e.g., Third Annual Report, at ¶ 38 ("most observers project continued strong growth for the DBS industry through the end of the decade"); McConville & Jessell, "Competition from the Sky," Broadcasting and Cable (Nov. 25, 1996), at p. 22; McConville, "DBS Operators Gather as Marketplace Heats UP," Broadcasting and Cable (Aug. 12, 1996), at p. 66.

[6] See, e.g., Littleton, "Murdoch, Ergen Take to Sky," Broadcasting & Cable (Mar. 3, 1997), at pp. 41-42 (reporting investment of $1 billion in connection with News Corp.'s acquisition of a 50% interest in EchoStar); In re Application of MCI Telecommunications Corp., No. 73-SAT-PL-96 (FCC Dec. 5, 1996), at p. 2, n.4 (winning bid of $682.5 million for the last available DBS slot with full coverage of the continental United States).

mission should have no hesitation in implementing Section 25(b) to the full extent of Congress's intent.[7]

There are important reasons for the Commission to move promptly to make the set-aside capacity available, thereby maximizing opportunities for educational services to reach the public through DBS. Improving education is a top priority of national and state policymakers, parents, and businesses.[8] These individuals understand that if this country is going to compete in the new global economy our educational system -- including our elementary, secondary, post-secondary, and continuing education systems -- must be dramatically improved. Educational technology and telecommunications are powerful new tools for assuring that every student, teacher, and adult learner will have convenient and affordable access to new and improved learning opportunities. DBS is a technology that could have

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[7] Moreover, it is now clear that Section 25(b) will not impose as much of a burden on the DBS industry as might have been anticipated in 1993. In the past year or two, major DBS operators have negotiated to carry some programming distributed by PBS and are providing compensation to PBS for this programming. See page 20, infra. Therefore, the practical effect of implementing the set-aside will be less than might otherwise appear.

While DBS operators have found it advantageous to carry some noncommercial programming, Congress properly determined that the commercial marketplace would not generate an adequate level of opportunities for DBS carriage of programming from noncommercial sources. See Part II, infra.

[8] This Administration has made a strong commitment to improve educational opportunities and achievements in order to prepare Americans for the challenges of the next century.

enormous impact in helping the nation reach its educational goals.

Public television has tremendous expertise in distance learning and extensive curriculum resources that could be made more accessible to millions of learners through DBS. Although public television today reaches approximately 2 million teachers and 30 million students in preK-12 classrooms, DBS would expand public television's ability to meet the increasing demands for specialized courses and teacher training to help meet the national and state educational goals. For example, public television has recently developed several new integrated national/state/local teacher training services, including PBS Mathline, PBS Scienceline, and the Teacher Training Institute. These services could be far more accessible if they were available through DBS. Public television's unique Ready to Learn service for preschoolers, their caregivers and parents could also be extended through DBS.

Public television's college credit courses are currently enrolling about 400,000 students each year. Making these courses available through DBS could significantly expand access to a college degree for millions of Americans. The workplace skills and productivity of millions more working adults could be increased with DBS carriage of public television's continuing education services, including the Adult Learning Service, The Business Channel, Literacy Link, and Ready to Earn.

PBS looks forward to extending public television's history of providing educational equity and excellence to all Americans through DBS. Prompt implementation of Section 25(b) will help to make this a reality.

II. Section 25(b) Implements Congress's Longstanding Commitment to Assuring the Availability of Noncommercial Educational Programming Sources Through All Distribution Technologies

Promulgation of rules under Section 25(b) should rest on the recognition that the DBS set-aside carries forward into the DBS medium the policies originally adopted in 1952 when the Commission initially set aside television channels for noncommercial educational use.' The Commission recognized then that noncommercial educational entities were motivated by interests different from those of commercial broadcasters and that noncommercial entities would therefore offer an alternative source of programming.[10] Congress subsequently ratified that policy in numerous legislative enactments supporting public broadcasting.[11] Through these enactments, Congress has consis-

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[9] See Sixth Report and Order on Television Assisnments, 41 F.C.C. 148 (1952). In that seminal order, the Commission set aside 242 channels for noncommercial educational use.

[10] Id. at 159-61; 588-93. See also The Carnegie Commission on Educational Television, Public Television: A Program for Action 88-99 (1967).

[11] Since the 1960s, Congress has appropriated approximately $4.9 billion to fund public broadcasting and approximately $730 million for the planning and construction of public television and radio facilities. See, e.g., Pub. L. No. 102-356, 106 Stat. 949 (Aug. 26, 1992); Pub. L. No. 100-626, 102 Stat. 3207 (Nov. 7, 1988); Pub. L. No. 99-272, 100 Stat. 117 (Apr. 7,

(continued...)

tently reaffirmed that providing universal access to public broadcasting serves a paramount government interest in advancing the nation's educational and cultural goals.

Congress has also recognized that access to noncommercial programming sources should not be limited to the terrestrial broadcast medium, but should be extended to other distribution technologies. As early as 1967, Congress decreed that

> it is in the public interest to encourage the growth and development of nonbroadcast technologies for the delivery of public telecommunications services.[12]

In 1978, Congress noted that public television should "make the maximum use practicable" of new technologies.[13] Similarly, in 1988, when Congress funded public broadcasting's new satellite interconnection system, the House Report stated:

> it is critical that the public broadcasting system be able to take advantage of technologies such as advanced television technologies, including HDTV, interactive video and digital data distribution.[14]

In 1992, when Congress authorized additional funds for public broadcasting, it again found that

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[11] (...continued)
1986) ; Pub. L. No. 98-214, 97 Stat. 1467 (Dec. 8, 1983); Pub. L. No. 97-35, 95 Stat. 725-30 (Aug. 13, 1981); Pub. L. No. 95-567, 92 Stat. 2411 (Nov. 2, 1978); Pub. L. No. 90-294, 82 Stat. 108 (Apr. 26, 1968).

[12] 47 U.S.C. § 396(a) (2).

[13] See, e.g., S. Rep. No. 95-858, 95th Cong., 2d Sess. 6 (1978).

[14] H.R. Rep. No. 825, 100th Cong., 2d Sess. 14 (1988).

> it is in the public interest for the Federal Government to insure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies.[15]

The House Report stated that the 1992 legislation

> strongly endorses a policy of broad access to the essential public services offered by telecommunications, regardless of the technology used to deliver those services, in order to advance the compelling governmental interest in increasing the amount of educational, informational, and public interest programming available to the nation's citizens.[16]

As the court of appeals concluded in rejecting a First Amendment challenge to the DBS set-aside, Section 25(b) merely applies this longstanding congressional policy to DBS.[17] "Section 25 . . . represents nothing more than a new application of a well-settled government policy of ensuring public access to noncommercial programming." Time Warner, 93 F.3d at 976.

In view of this clear congressional policy, the regulations the Commission adopts must assure (1) that public broadcasters and the other qualified noncommercial entities referred to in Section 25(b) are given maximum access to DBS

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[15] Pub. L. No. 102-356, 106 Stat. 949 (Aug. 26, 1992) (emphasis added).

[16] H.R. Rep. No. 363, 102nd Cong., 1st Sess. 18 (1991).

[17] The "must carry" provisions governing cable carriage of noncommercial educational stations, 47 U.S.C. § 535, similarly apply this congressional policy to cable. The Supreme Court recently upheld the constitutionality of these "must carry" provisions. Turner Broadcastins System, Inc. v. FCC, No. 95-992 (U.S. Mar. 31, 1997).

facilities on reasonable terms; and (2) that the capacity made available is in amounts and at times that will permit noncommercial entities to offer meaningful program services to the audiences for which they are intended. These comments set forth proposals designed to fulfill those objectives. In any event, whatever regulations the Commission ultimately adopts must be carefully crafted to ensure that the obligations imposed by Section 25(b) are fully implemented and are not evaded.

III. The Commission Should Not Define "Noncommercial Educational and Informational Programming"

Section 25(b) (1) of the Act requires DBS providers to reserve channel capacity for "noncommercial programming of an educational or informational nature." The Commission seeks comment on whether it should define the term "noncommercial educational and informational programming." 1997 Notice, p. 2; 1993 Notice at ¶ 44. For a variety of reasons, the Commission need not and should not define the term.

There is no indication that Congress intended that the Commission define the term "noncommercial educational and informational programming." Congress itself did not provide a definition in the statute, although it defined several other terms. Nor did it instruct the Commission to craft such a definition. Instead, Congress stated explicitly that a DBS provider would comply with the requirement for reservation of channel capacity by affording access to programming supplied by specified categories of noncommercial entities. In

Section 25(b)(3), Congress stated that a provider of DBS service "shall meet the requirements of [Section 25(b)] by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions." In Section 25(b)(5)(B), Congress defined the term "national educational programming supplier" as including three particular types of entities -- public television stations, other public telecommunications entities, and educational institutions. Entities in these three named categories are widely recognized as bona fide non-profit providers of educational and informational programming.

In view of the regulatory approach adopted by Congress in the statute, the Commission need not define the term "noncommercial educational or informational programming" nor otherwise regulate the content of the programming provided for the reserved DBS capacity. The Commission need regulate only to the extent necessary to ensure that access is provided to entities that fall within the statutory definition of "national educational programming supplier," discussed below at pages 13-17.

There are sound policy reasons supporting Congress's approach. Drafting any definition of "noncommercial educational and informational programming" would be difficult, and applying the definition to specific programs would be even more problematic. Any effort to enforce a definition presumably would require the Commission to review editorial decisions of programmers,

enmeshing it in sensitive First Amendment issues. In other legislation regarding public broadcasting, Congress has steered clear of such First Amendment difficulties by avoiding intrusive regulation of the content of programming. See Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 650-51 (1994) (describing lack of intrusive content regulation of public television stations); 47 U.S.C. §§ 396(g)(1)(D), 398(a). The Commission likewise has eschewed any effort to impose content limitations in its regulation of public broadcasters. Policy considerations, as well as the mandate of Congress, prescribe the same course here.

It would be appropriate for the Commission to impose on the programming distributed pursuant to Section 25(b) the same limited restrictions that apply to noncommercial broadcast stations. See 47 U.S.C. §§ 399a & 399b; 47 C.F.R. § 73.621(e). Those provisions prohibit the broadcast of promotional material on behalf of for-profit entities and impose certain limitations relating to political programming. These prohibitions are designed to ensure that the funding of noncommercial programming services does not undermine congressional and Commission objectives for public broadcasting.[18] Similar restrictions will

[18] See Noncommercial Nature of Educational Broadcast Stations, 86 F.C.C. 2d 141 (1981), as modified, 90 F.C.C. 2d 895 (1982); H.R. Rep. No. 97-82, 97th Cong., 1st Sess. 23-25 (1981); H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 895 (1981).

further Congress's objectives with respect to DBS operations without embroiling the Commission in content regulation.[19]

IV. Access to the Reserved Capacity Should Be Limited to the Noncommercial Entities Specified in the Statute

As described above, Section 25(b)(3) requires DBS providers to make reserved channel capacity available to "national educational programming suppliers." Section 25(b)(5)(B) defines "national educational programming supplier [to] include[] any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions." The Commission seeks comment on the scope of the term "national educational programming supplier," and asks whether any "other entities" should have access to the reserved channel capacity. 1997 Notice, p. 2; 1993 Notice at ¶ 43.

A. Section 25(b) Specifically Identifies the Categories of Entities with Access to the Reserved Capacity

It is clear from the statute itself that Congress intended the reserved channel capacity to be available only to

[19] The Commission in 1993 requested comment on "who should be responsible for the [noncommercial] programming in the event Commission rules or federal statutes are violated." 1993 Notice at ¶ 41. Section 25(b)(3) of the Act prohibits the DBS provider from exercising any editorial control over the programming provided by the noncommercial program supplier. In light of this statutory constraint, the Commission should look to the noncommercial program supplier in connection with enforcement of any applicable rules or statutes that concern programming content. The Commission has the authority to impose fines or forfeitures and to issue cease and desist orders where the noncommercial program supplier violates Commission rules or the Communications Act. 47 U.S.C. §§ 312(b) & 503(b)(2)(C).

those categories of entities explicitly named as "national educational programming suppliers" in Section 25(b)(5)(B). Congress did not state that qualified noncommercial educational television stations and the other named entities were merely examples, illustrative of a broader group. Rather, it stated that the term "national educational programming supplier" "includes" the named categories of entities." This choice of language signifies an intent to confine the term to the categories named in the definition.[21] Had Congress instead intended to ensure access for an open-ended list of program suppliers, it would have used language such as "includes but is not limited to" or "among other things."

There is simply no indication, in either the statute or the legislative history, that Congress intended that entities that do not qualify as "national educational programming suppliers," such as for-profit telecommunications entities, would be eligible for the reserved capacity under Section 25(b). Of course, DBS providers are free to make nonreserved capacity available to program suppliers other than those referred to in Section 25(b). It is clear, however, that DBS providers may

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[20] Congress presumably regarded entities within the named categories as bona fide non-profit suppliers of educational and informational programming. The named categories, which include "other public telecommunications entities," encompass a wide range of noncommercial entities. See pages 15-16 note 22, infra.

[21] It is a recognized canon of statutory construction that inclusion of certain terms implies the exclusion of others. See, e.g., United States v. McQuilkin, 78 F.3d 105, 108 (3d Cir.), cert. denied, 117 S.Ct. 89 (1996); United States v. Lopez, 938 F.2d 1293, 1297 (D.C. Cir. 1991).

satisfy the requirements of Section 25(b) only by carrying programming supplied by the categories of entities specifically identified in the statute.

B. The Commission Should Incorporate Section 397 Definitions

In its 1993 Notice, the Commission sought comment on whether it should incorporate in the DBS rules the existing definitions of "qualified noncommercial educational television station" and "public telecommunications entity" contained in Section 397 of the Communications Act, 47 U.S.C. § 397.[22] 1993

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[22] Section 397(6) of the Communications Act defines a "noncommercial educational broadcast station" and a "public broadcast station" as a television or radio station which:

> (A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation or association; or
>
> (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.

Section 397(12) of the Communications Act defines a "public telecommunications entity" as any enterprise which:

> (A) is a public broadcast station or a noncommercial telecommunications entity; and
>
> (B) disseminates public telecommunications services to the public.

Section 397(7) of the Communications Act defines the term "noncommercial telecommunications entity" to mean:

> any enterprise which --

(continued...)

Notice at ¶ 43. Such incorporation is entirely appropriate and advisable. Congress has already determined that the entities defined in the relevant subsections of Section 397 of the Communications Act constitute bona fide sources of noncommercial educational programming that serve the public, and has funded their efforts through the Public Telecommunications Facilities Program and CPB community service and program grants. Congress's use of the same terms in Section 25(b) can be presumed to reflect a judgment that the government should ensure public access to the same programming sources in the DBS medium.[23]

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[22](...continued)

> (A) is owned and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit foundation, corporation, or association; and
>
> (B) has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.

[23] Incorporation in the DBS rules of the definitions in Section 397 of the Communications Act would ensure that not only public television licensees, but also PBS and other public television and educational programming suppliers, such as the American Program Service, Children's Television Workshop, and regional public telecommunications networks, will have access to the reserved noncommercial capacity.

As the Commission has noted (1993 Notice at ¶ 43), Congress specifically included in the definition of "national educational programming supplier" some entities (including public television stations and educational institutions) that are often perceived as "local" in nature. Thus, the term "national" cannot have been intended to limit eligibility for reserved capacity based on the scope of a programming supplier's operations. Of (continued...)

Because Section 397 of the Communications Act does not define the term "public or private educational institutions," the Commission must identify another source for definition of that term for the purposes of the DBS provision. Rather than creating a new definition, the Commission should apply the criteria it uses for Instructional Television Fixed Service ("ITFS") applications. See 47 C.F.R. § 74.932(a) (1996). Under these criteria, the category would be limited to accredited educational institutions, governmental organizations engaged in the formal education of enrolled students, and nonprofit organizations whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.[24] This definition is a reasonable one, and its use would promote administrative efficiency.

C. **Corporate Relationships with DBS Providers**

In its 1993 Notice, the Commission sought comments on the significance for Section 25(b) obligations of possible corporate relationships between entities providing DBS service and noncommercial program suppliers. 1993 Notice at ¶ 43.

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[23](...continued)
course, "local" entities may produce programming that has a national focus, or that treats issues of national interest.

[24] Under the ITFS eligibility criteria, accredited primary and secondary schools, colleges and universities would be eligible to seek access to reserved DBS capacity. See Amendment of Part 74 of the Commission's Rules and Regulations in Regard to the Instructional Television Fixed Service, MM Docket No. 83-523, 101 F.C.C. 2d 50, 60 (1985).